IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI-GOA.

APPEAL FROM ORDER NO. 29 OF 2006

1. Shri Premanand Govind Fadte,
   son of Govind Laxman Fadte,
   major in age, married, and his wife;

2. Smt. Manda Premanand Fadte,
   daughter of Narayan P. Chodankar,
   major of age, housewife,

   Both residents of Nova Palmar,
   P.O. Cortalim, Tal. Marmgao.

3. Shri Uttam Laxman Fadte,
   son of Laximan Narayan Fadte,
   major of age, married, and his wife,

4. Smt. Sallu @ Uttara Uttam Fadte,
   major of age, married, Indian national,

   Both of residents of Bandoli,
   P.O. Dabhal, Sanguem Taluka, Goa.

   All four of them represented by
   Power of Attorney reg no.
   224/22.1.2003 and Reg no. 225/
   22.1.2003, before Notary of
   Adv. Albino C. Vales, Vasco Da Gama
   in favour of Shri Srinivas Laxman Fadte,
   resident of Simplewada, Sancoala,
   P.O. Cortalim, Mormugao, Goa. .... Appellants

Versus

1. State of Goa,
   through its Chief Secretary,
   Government of Goa, having his

Office at Alto Porvorim,
Bardez, Goa.

2. The Collector, District of South Goa,
having his Office at Opp.
Municipal Garden, Margao,
Salcete, Goa. .... Respondents

Shri V.R. Tamba, Advocate for Appellants.

Shri Guru Shirodkar, Government Advocate for Respondents.

CORAM : **P.V. KAKADE, J.**

DATE : **21st August, 2006**

ORAL ORDER

Heard learned Counsel for both the parties. The plaintiffs-appellants have preferred the appeal against the order passed by the Adhoc Additional District Judge, Fast Track Court-I, South Goa, Margao, rejecting the application for temporary injunction with a rider that the defendant State and the other defendants are stayed from interfering with the house and the well belonging to the plaintiffs till the disposal of the suit.

2. The plaintiffs filed the suit for declaration, permanent injunction and consequential reliefs and alleged that the property bearing survey no. 46/1 and 46/2 of Revenue Village Bandoli, Sanguem Taluka was

assigned to the father of defendants no. 3, 4 & 5 on 10/07/1964 under the contract of emphyteusis on payment of annual emphyteusis fees of Rs. 29.97 in terms of Article 72 of the Decree no. 3602 dated 24/11/1917 and Portuguese Civil Code 1867 and the title of assignment No. 89/CAP/1959 dated 10/07/1964 was issued to the assignee and same is registered in the Book of State properties under no. 1095. The assignee Shri Minguel Jose Joanes died on 14/06/1972 and vide Collector's order dated 18/03/1971 defendant no.1 transferred the suit property by contract of emphyteusis exclusively in favour of his widow Smt. Estefania Camara Joanes. According to the plaintiffs, said Smt. Estefania Camara Joanes in turn transferred the possessory domain of the suit property in favour of father of plaintiff no.1 Shri Govind Laxman Fatte by agreement of transfer cum sale executed on 4/02/1974 with the express understanding that transfer shall be made by her in favour of father of plaintiff no.1. Inspite of all this background it is alleged that the defendants are interfering in the possession of the plaintiffs and hence the suit came to be filed. While filing the suit, an application for temporary injunction was also filed. The defendants challenged the application, inter alia, denying the contentions sought to be raised on behalf of the plaintiffs and sought dismissal of the suit.

3. The lower Court after hearing both the parties held that, though the plaintiffs were not entitled for temporary injunction as prayed for, the defendants were liable to be restrained from interfering with the house and the well belonging to the plaintiffs pending the suit.

4. The learned Counsel for the appellants took me through the provisions of the Land Revenue Code 1968 and Rules therein including Article 75 under Portuguese Decree No. 3602 dated 24/11/1917. In my considered view, whether the State Government wrongfully omitted to embody Article 75 of the said Decree in the deed of assignment and whether State Government was entitled to do so, would be the question to determine at length at the stage of final hearing of the suit and therefore, without going into the merits of those aspects, I am inclined to issue directions to the trial Court to expedite hearing of the suit with direction to the parties to maintain status quo with the property.

5. Hence, the lower Court is directed to expedite the hearing of the suit after giving opportunity to the parties to the suit to lead evidence and adjudicate the suit in order to dispose it of within a period of one year from the date of receipt of the writ of this Court. In the meantime, the

parties to maintain status quo with regard to the suit property and defendant State shall not create third party interest with regard to the suit property pending the adjudication of the suit. With these directions, the appeal stands disposed of with no order as to costs.

P.V. KAKADE, J.

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